IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

WILLIAM ROBERT BILL,	:	
	:	
Plaintiff,	:	
	:	
v.	:	**Civil Action No. 05-154E**
	:	**Judge Sean J. McLaughlin**
TROOPER VICTOR J. STERNBY,	:	
	:	
Defendant.	:	

DEFENDANT'S RESPONSE TO PLAINTIFF'S
COUNTER-STATEMENT OF UNCONTESTED FACTS

AND NOW, comes the defendant, Victor J. Sternby, by his attorneys, Thomas W. Corbett Jr., Attorney General, Mary Lynch Friedline, Senior Deputy Attorney General, Susan J. Forney, Chief Deputy Attorney General, Chief, Litigation Section, and files the following Response to Plaintiff's Counter-Statement of Uncontested Facts:

General Objection to all paragraphs: Plaintiff's Counter-Statement of Uncontested Facts (paragraphs 35 through 45 of Document # 23) fails to cite to a particular pleading, deposition or other part of the record supporting the plaintiff's statements as required by Local Rule 56.1(B)(1). Therefore, the statements should be deemed denied.

To the extent that a response is nonetheless required, defendant answers as follows:

35. Denied as stated. While Trooper Sternby believed that his observations as to Bill's disheveled dress and blood shot eyes were probably made after he initially contacted Bill and woke him, the observation about strong odor of alcohol on Bill's breath was not made until after Bill exited the truck. (Exh. 1 - Sternby Depo. Tr. at 33-39.)

36. Admitted. (Exh. 2 - Sternby Report.)

37. Denied as stated. As to the horizontal gaze test, Trooper Sternby could not recall whether he had decided not to administer that test or if he just intended to do it later and just did not get to it because Bill fell at the front of the vehicle while he was preparing to perform the PBT. (Exh. 1 - Sternby Depo. Tr. at 39 - 40, 72 - 73.)

38. Denied as stated. Trooper Sternby observed that at times throughout his contact with plaintiff Bill had slurred speech. Further, while Bill did not seem to understand Sternby's instructions for the walk and turn test, he did seem to understand instructions for the one-leg stand test. (Exh. 1 - Sternby Depo. Tr. at 39, 70 - 72.)

39. Denied as stated. In response to a question posed by plaintiff's counsel, Trooper Sternby agreed that it had "crossed his mind" that Bill could fall and hurt himself. However, Sternby went on to state that this was not of any great concern at the time because Bill's unsure footing was nothing extraordinary, Bill wasn't drifting off or wandering around, Bill seemed "pretty good" as they were walking to the vehicle, he had been standing on his own without any help or support, there was nothing about the roadway in front of the patrol car that was dangerous or hazardous, Sternby had seen people with higher levels of intoxication who did not fall, even though they were more unstable on their feet, and he had never seen anyone completely fall down without attempts to catch themselves before. (Exh. 1 - Sternby Depo. Tr. at 43 - 44, 47 – 48, 50 – 54, 73-74; Exh. 3 - Video.)

40. Admitted. (Exh. 1 - Sternby Depo. Tr. at 29.)

41. Objection. This is a legal conclusion, not a statement of material fact. To the extent that a response is required, Sternby believed that the PBT is admissible. (Exh. 1 - Sternby Depo. Tr. at 23.)

42. Objection. This is a legal conclusion and/or a statement of opinion, not a statement of material fact. To the extent that a response is required, the statement is denied as stated. Trooper Sternby stated that by the time he had reached the horizontal gaze test, he was fairly certain that Bill was too intoxicated to drive a vehicle safely. However, he does not form an opinion until completion of all the tests. (Exh. 1 - Sternby Depo. Tr. at 40 – 41.) Trooper Sternby also stated that he wants to use all the tests that he has available; he wants to make the fairest and most accurate decision based on everything possible before taking someone into custody. (Exh. 1 - Sternby Depo. Tr. at 56 - 57.)

43. Objection. This is a legal conclusion and/or statement of opinion, not a statement of material fact. To the extent that a response is required, Sternby incorporates his response to paragraph 42.

44. Objection. This is a statement of opinion, not a statement of material fact. To the extent that a response is required, the statement is denied. Trooper repeatedly expressed concern for the safety and rights of Bill. (Exh. 1 - Sternby Depo. Tr. at 41- 44, 54-55, 58-62.)

45. Objection. This is a statement of opinion, not a statement of material fact. To the extent that a response is required, the statement is denied. Trooper Sternby reasonably believed under the circumstances that he was placing Bill in a position of safety in front of the car. (Exh. 1 - Sternby Depo. Tr. at 42 – 44, 59 - 62.)

Respectfully submitted:

Thomas W. Corbett, Jr.
Attorney General

By: /s/ Mary Lynch Friedline
Mary Lynch Friedline
Senior Deputy Attorney General
Attorney I.D. No. 47046

Susan J. Forney
Chief Deputy Attorney General

Office of Attorney General
6th Fl., Manor Complex
564 Forbes Avenue
Pittsburgh, PA 15219

Date: May 31, 2006